

APPLICANT:
James & Terri Robertson

**REQUEST: Variance to permit a deck
and 6 foot high fence within the required
front yard setback in the R3 District**

HEARING DATE: July 19, 2006

**BEFORE THE
ZONING HEARING EXAMINER
FOR HARFORD COUNTY
BOARD OF APPEALS**

Case No. 5540

ZONING HEARING EXAMINER'S DECISION

APPLICANT: James M. Robertson

CO-APPLICANT: Terri L. Robertson

LOCATION: 831 Woodmont Court/Magnolia Farms, Joppa
Tax Map: 69 / Grid: 1C / Parcel: 138 / Lot: 45
First (1st) Election District

ZONING: R3 / Urban Residential

REQUEST: A variance pursuant to Section 267-36(B), Table VI, of the Harford County Code, to permit a deck to encroach into the 25 foot front yard setback (17 foot setback proposed), and a variance pursuant to Section 267-24B(1), to permit a fence to exceed 4 feet in height (6 feet proposed) within the front yard setback in the R3 District.

TESTIMONY AND EVIDENCE OF RECORD:

Co-Applicant James M. Robertson testified that he and his wife had purchased the subject property in July 2005. The property itself consists of about .173 of an acre, zoned R3, and is improved by a single-family, split-level home with a two-car garage.

Photographs in the file indicate, and Mr. Robertson testified, that the side and back yards of the home are surrounded by an attractive, 6 foot high vinyl fence. Mr. Robertson stated that the fence had been in existence when he and his wife purchased the property.

More recently, the Applicants decided they wished to install a raised deck in their rear yard. The house has a sliding glass door on the first above ground level and was obviously built with the anticipation that a raised deck would be attached to the rear of the home. However, according to Mr. Robertson and as shown on the plot plan of the property (Attachment 3 to the Staff Report), the setback line off the rear lot line reaches virtually to the rear wall of the dwelling. Accordingly, no deck could be built without impacting the rear setback line.

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Mr. Robertson, at the time he first made application to the County for the necessary variance for the deck, learned that the 6 foot high fence was in violation and that no permit had been obtained for it. Accordingly, the Applicants now ask for a variance to allow a 6 foot high privacy fence to run along the rear lot line of their property, and a variance to allow the raised deck to encroach approximately 8 feet into the 25 foot setback from the Fort Hoyle Road lot line.

In support of his request, Mr. Robertson points out that his lot itself is triangular in shape, with a narrow frontage and a longer back yard. Furthermore, the dwelling fronts on Woodmont Court, and the rear yard faces Fort Hoyle Road. Accordingly, the Applicants' property is encumbered by two front yard setbacks. The setback along Fort Hoyle Road is deeper than it would be if it were strictly a rear yard setback. Mr. Robertson further states that the house was obviously built anticipating a deck to be built to the rear, but no available space exists for such a deck without a variance. Mr. Robertson also testified that other neighbors have been granted similar variances.¹ Mr. Robertson states that a 6 foot high fence is necessary given the heavy traffic on Fort Hoyle Road, and the noise and congestion which arise due to the fact that two public schools are located across Fort Hoyle Road from the Applicants' home and neighborhood.

Mr. Robertson has discussed his application with neighbors and no neighbor has any objection.

The Harford County Department of Planning and Zoning Staff Report indicates that the property is unique;

“The lot has an unusual shape due to its location on the cul de sac. (Woodmont Court). The buildable area of the property is severely reduced due to the requirement of two front yard setbacks. Also, there is a wider than usual easement located along the northern side property line. The requested size of the deck is consistent for this community.

Fort Hoyle Road carries a substantial amount of school bus traffic due to the location of the two schools (Magnolia Elementary School and Magnolia Middle School). The fence will provide some privacy from the traffic along the road and the activities at the schools. There have been similar variances granted in this neighborhood.”

There was no testimony or evidence given in opposition.

¹ The Hearing Examiner notes that an almost identical variance was recently requested and approved for a close neighbor.

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APPLICABLE LAW:

Section 267-11 of the Harford County Code allows the granting of a variance to the requirements of the Code:

“Variances.

A. Except as provided in Section 267-41.1.H., variances from the provisions or requirements of this Part 1 may be granted if the Board finds that:

(1) By reason of the uniqueness of the property or topographical conditions, the literal enforcement of this Part 1 would result in practical difficulty or unreasonable hardship.

(2) The variance will not be substantially detrimental to adjacent properties or will not materially impair the purpose of this Part 1 or the public interest.

B. In authorizing a variance, the Board may impose such conditions regarding the location, character and other features of the proposed structure or use as it may deem necessary, consistent with the purposes of the Part 1 and the laws of the state applicable thereto. No variance shall exceed the minimum adjustment necessary to relieve the hardship imposed by literal enforcement of this Part 1. The Board may require such guaranty or bond as it may deem necessary to insure compliance with conditions imposed.

C. If an application for a variance is denied, the Board shall take no further action on another application for substantially the same relief until after two (2) years from the date of such disapproval.”

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FINDINGS OF FACT AND CONCLUSIONS OF LAW:

The Co-Applicants and their family reside in an attractive, split level home on a lot which, at less than two-tenths of an acre, is relatively small given the size of the home. When purchased a year ago the rear yard of the property was completely surrounded by a 6 foot high vinyl fence. The lot backs up to Fort Hoyle Road which is a major collector road, used by numerous motorists, including buses which service Magnolia Elementary School and Magnolia Middle School directly across Fort Hoyle Road from the Applicants' neighborhood. Quite obviously, a fence of 6 feet in height helps decrease the noise which these activities generate and which would tend to impact the Applicants' property. However, as the Fort Hoyle side is considered a front yard, the fence can by Code only be 4 feet high without a variance. The Applicants testified they were unaware that no permit had been granted for the fence, and that it was in violation, at the time they purchased their property. This testimony is accepted.

Furthermore, the first above ground level of the house was constructed with sliding glass doors which were obviously intended to open onto a raised deck. However, there is not sufficient room to construct any sort of a useable deck behind the house without impacting the setback line. Virtually no deck of any size could be constructed although, perhaps, a set of stairs could be built. Certainly the Applicants would have reasonably anticipated that such a deck could be constructed at the time they purchased their house. To their surprise, they quickly discovered that only by way of a variance could a deck be constructed.

The Applicants have presented a compelling argument for the variances requested. The lot is small, triangular in shape, and is impacted by two front yard setbacks. A very attractive, and necessary, 6 foot high fence was created on the lot before the Applicants purchased the property. Furthermore, to all outward appearances the home was designed with the anticipation that a deck would be added to the home. The Applicants suggest, and rightly so, that sliding glass doors opening up some 10 feet above the ground represents a potential safety hazard.

It is accordingly found that the property of the Applicants is unique for the reasons given and as a result, the Applicants suffer a practical difficulty in the use of their property. The requested variances would allow the Applicants to use their property in a way similar to others in the neighborhood, and in a way which would have no adverse impact whatsoever upon the adjoining property owners and neighbors. Indeed, the relief requested would tend to improve the Applicants' property and quality of life, and would be consistent with other improvements on properties in the neighborhood. It is further found that the relief requested is the minimum necessary to alleviate the difficulty.

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CONCLUSION:

It is, accordingly, recommended that the requested variances be granted, subject to the Applicants obtaining all necessary permits and inspections for the deck and fence.

Date: August 25, 2006

ROBERT F. KAHOE, JR.
Zoning Hearing Examiner

Any appeal of this decision must be received by 5:00 p.m. on SEPTEMBER 25, 2006.